

**EXHIBIT B**

JAMES L. GRESS †  
JOHN C. YOUNG †  
BRETT B. SCHOEPPER †  
SARAH A. GARRETT †  
JOSEPH A. URBANSKI †  
KELLY C. WALSH †  
OMEED GHAFARI †  
GORDON T. CLARK – Retired



GRESS - CLARK - YOUNG  
& SCHOEPPER

8705 SW Nimbus Avenue, Suite 240  
Beaverton, Oregon 97008  
TELEPHONE: (971) 285-3525  
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† MEMBER OREGON and WASHINGTON BARS  
\*\* MEMBER OREGON BAR

January 19, 2021

**SENT VIA FAX/REGULAR MAIL**

Penalty Adjudicator  
Department of Labor and Industries  
Self-Insurance Section  
PO Box 44892  
Olympia, WA 98504-4892

RE: Claimant : Isaiah Hutson  
Employer : Clark County  
D/Injury : 1/14/2020  
Claim No. : 003589-003102-WC-01  
DLI Claim No : SY10571

**EMPLOYER'S REQUEST FOR A FINDING OF WILLFUL  
MISREPRESENTATION**

Dear Penalty Adjudicator:

I represent the employer with regard to this industrial injury claim and as such please ensure that I am copied on all future correspondence and Department orders. Please too consider this as the employer's formal request for a finding of willful misrepresentation together with a demand for repayment of provisional time loss compensation benefits from the date of discovery of this willful misrepresentation on August 1, 2020, through December of 2020 totaling \$25,376.58. Moreover, we are seeking pursuant to the statute governing willful misrepresentation a 50 percent penalty on top of the reimbursement for unjust receipt of time loss compensation benefits which would equal an additional \$12,688.29. Please find enclosed along with this correspondence the Department's willful misrepresentation checklist along with all supporting documents and materials to include a benefits payment ledger, medical records and opinions, and investigation reports along with video surveillance evidence proving that the claimant has willfully misrepresented his condition thereby improperly receiving benefits within what should now be a closed industrial injury claim.

CC\_005749

Department of Labor and Industries  
January 19, 2021  
Page 2

By way of background, the claimant alleged an injury to the right shoulder occurring on January 14, 2020. This claim was ultimately allowed and the claimant followed up with various providers to address this alleged and contended right shoulder injury. In the summer of 2020, to assist in the ongoing processing of this industrial claim, an independent medical examination had been scheduled for August 1, 2020. Shortly before the claimant was required to attend this examination, the third-party administrator was informed by the claimant that he had been exposed to COVID-19 and as a consequence would not be in a position to attend the properly noticed and scheduled independent medical examination due to quarantine requirements. However, the claimant was not forthright in his representations to the third-party administrator and instead of attending the independent medical examination as scheduled elected to recreate with a number of other individuals at Dougan Falls the entire day on August 1, 2020. You will see within these materials video surveillance footage taken of the claimant on August 1, 2020, depicting him engaging in various unrestricted activities involving the right upper extremity which are contrary to his clinical presentation to providers. Specifically, there is footage depicting the claimant carrying a child and backpack along with shopping at a supermarket to prepare for his all day outing. While at Dougan Falls, the investigator shows the claimant engaging in various activities to include sitting in a chair, swimming, climbing on rocks with both hands and arms, conversing with multiple people, inflating a floating innertube along with various other activities with no indication of any pain, limitations, or problems involving his allegedly disabled right upper extremity.

Of particular importance in review of these materials is the June 3, 2020, follow-up visit with Dr. McCarron wherein the claimant reported no improvement in his condition. He further represented at that time to Dr. McCarron that his pain was limiting him in all activities of daily living and that his condition was even more painful than the month prior. Dr. McCarron at that point had recommended a diagnostic arthroscopy to address his contended disability. As we know, the claimant subsequently engaged in various activities in August of 2020 demonstrating no disability whatsoever but when following up again with Dr. McCarron on September 29, 2020, he again reported that his condition was unchanged thereby resulting in Dr. McCarron endorsing a recommendation for surgical intervention. Dr. McCarron's ongoing recommendation for surgery prompted an independent medical examination with Dr. Curcin on October 22, 2020. Dr. Curcin had reviewed all the records and materials along with performing an examination and believed that this claim should be closed and that surgery should not be provided. The doctor further opined that based on the surveillance footage the claimant was capable of much greater range of motion in his shoulder than he had reported on examination both with himself as well as with Dr. McCarron. Dr. Curcin also opined that the claimant was capable of returning to gainful employment on a reasonably continuous basis without the need for work restrictions. I note that Dr. McCarron had previously and continues to

Department of Labor and Industries  
January 19, 2021  
Page 3

endorse the claimant being temporarily and totally disabled based upon the claimant's representations to him.

Most recently, the claim file information was shared with a Board certified upper extremity orthopedic expert, Dr. Joseph Lynch, who had completed a report dated December 7, 2020. Within this report, when taking into account the totality of information made available to him, the doctor pointed out that the video surveillance depicted specific episodes of the claimant raising his arm completely overhead to pull a chair out of a bag with ease and without hesitation. The doctor also noted that this video surveillance footage demonstrated normal function and use of the shoulder without any sign of physical limitation which again would be contrary to the representations made by the claimant within the clinical setting. These factors, together with the doctor's knowledge and experience in dealing with upper extremity conditions, led the doctor to limit this industrial claim to the extent there was an injury to a resolved right shoulder strain. The doctor also concluded that "The degree of function demonstrated on the surveillance video and the discrepant findings documented in the medical record cannot be explained on the basis of an orthopedic diagnosis; nor can it be explained by the objective findings demonstrated on the imaging studies provided." Dr. Lynch went on to state that these discrepancies "could be explained by willful misrepresentation."

As there is no rational medical basis to explain the discrepancies noted within this record, the only reasonable conclusion to be made is that the claimant did commit willful misrepresentation and as a result the Department should enter an order to that effect. Please note as well that my client has further sought a closure of this industrial claim consistent with the preponderance of reliable and credible medical opinion evidence. If you have any questions or concerns with regard to the materials provided and the request being made of the Department in light of these concerning facts and circumstances, I am always available to discuss this further.

Regards,

*\*Electronically filed due to COVID-19\**

Brett B. Schoepper

BBS:ab  
Direct Dial: (971) 232-5247  
Email: [brett@gressandclarklaw.com](mailto:brett@gressandclarklaw.com)  
Enclosures

cc: Isaiah Hutson, Claimant  
Katie DeFrang, Gallagher Bassett Services (Sent via Email)  
Jami Zoellner, Clark County (Sent via Email)  
Judy Straight, Clark County (Sent via Email)

CC\_005751

January 20, 2021

## Start, Stop or Deny Compensation Benefits



PO BOX 2934  
CLINTON, IA 52733  
(503) 675-6575  
(503) 675-6574 FAX

ISAIAH HUTSON  
715 NW 6TH AVE  
BATTLE GROUND, WA 98604-8058

RE: Claim SY10571

Dear Mr. Hutson,

Time loss compensation benefits ended effective 1/20/21 because you are capable of returning to full duty work without restriction based on the 10/22/20 IME report from Dr. Curcin and 12/7/20 report from Dr. Lynch.

### General Information:

If you have been released to work or have returned to any type of work, you may not be entitled to this payment. If you have applied for, or are receiving Social Security Benefits, please notify me immediately. My goal is to help you heal and return to work and I welcome you to contact me to talk about how I may assist.

No compensation benefits are paid for the date of injury and the next three days, unless you have been disabled on the fourteenth calendar day from the date of injury. Attempts to return to work within fourteen days from the date of injury will not affect this entitlement.

If you have questions about the action being taken, or have additional information you'd like to provide, please contact me at the phone number listed below.

Sincerely,

Katie DeFrang  
Name

503-303-6312  
Phone Number

**If you dispute the action being taken, you may write the Department of Labor & Industries within 60 days at:**

**Department of Labor & Industries  
PO Box 44892  
Olympia WA 98504-4892  
Fax: 360-902-6900**

**Or go to: <http://secure.Lni.wa.gov/ReportSelfInsuredEmployer/#>**

January 20, 2021

## Treatment Decision



PO BOX 2934  
CLINTON, IA 52733  
(503) 675-6575  
(503) 675-6574 FAX

ISAIAH HUTSON  
715 NW 6TH AVE  
BATTLE GROUND, WA 98604-8058

RE: Claim SY10571

Dear Mr. Hutson,

This notice is about your treatment recommendations received from Dr. Jesse McCarron.

We have received a request for authorization for right shoulder surgery: arthroscopy capsular release, distal clavicle excision, procedure code(s) 29825, 29824. The requested treatment is denied for the following reasons:

The right shoulder surgery is not authorized based on the 10/22/20 IME report from Dr. Curcin and 12/7/20 report from Dr. Lynch which found that claimant's right shoulder condition is fixed and stable, requiring no further curative treatment.

If you have questions about the action being taken, or have additional information you'd like to provide, please contact me at the phone number listed below.

Sincerely,

Katie DeFrang  
Name

503-303-6312  
Phone Number

**If you dispute the action being taken, you may write the Department of Labor & Industries within 60 days at:**

**Department of Labor & Industries  
PO Box 44892  
Olympia WA 98504-4892  
Fax: 360-902-6900**

**Or go to: <http://secure.Lni.wa.gov/ReportSelfInsuredEmployer/#>**

cc: Dr. Jesse McCarron



RECEIVED  
01.29.2021  
Clark County  
Risk Management

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
PO BOX 44892, OLYMPIA, WASHINGTON 98504-4892

January 25, 2021

CLARK COUNTY  
% GALLAGHER BASSETT  
PO BOX 2934  
CLINTON IA 52733-2934

CLAIM NUMBER SY10571  
INJURY DATE 01/14/2020  
DATE OF BIRTH [REDACTED]  
CLAIMANT HUTSON ISAIAH

Dear Mr. Hutson:

ATTENTION WORKER: This letter is to your attorney. This copy is for your information.

We have received your Notice of Representation for ISAIAH HUTSON. We have updated our system so you will receive all correspondence related to this claim.

You can view your client's claim file documents online at our Claim and Account Center at [WWW.CLAIMINFO.LNI.WA.GOV](http://WWW.CLAIMINFO.LNI.WA.GOV).

What can you charge?

Under Washington law (RCW 51.52.120), you cannot charge this worker more than 30 percent of the benefits he or she receives as a result of your services. However, in addition to your fee, you may charge your client for out-of-pocket expenses, such as travel, consultations, and minor office expenses.

What if there is a dispute over fees?

You, the worker, or the worker's beneficiary may apply to Labor and Industries in writing to set a reasonable attorney fee. The request must be sent within one year from the date the claim is closed. Send the request to:

Department of Labor and Industries  
Legal Services  
Appeals Consultant  
PO Box 44892  
Olympia, WA 98504-4892

Sincerely,

Emily R Gunderson  
Claims Unit Supervisor  
Self-Insurance Section  
PHONE: (360) 902-6890



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

PO BOX 44892, OLYMPIA, WASHINGTON 98504-4892

January 25, 2021

CLAIM NUMBER SY10571  
INJURY DATE 01/14/2020  
DATE OF BIRTH [REDACTED]  
CLAIMANT HUTSON ISAIAH

ORIG: WRKR/ATTY(E) - ISAIAH HUTSON, % EMERY REDDY, PLLC  
CC: EMPLOYER - CLARK COUNTY, % GALLAGHER BASSETT  
WORKER - ISAIAH HUTSON

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STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
SELF INSURANCE SECTION  
PO BOX 44892  
OLYMPIA, WA 98504-4892

MAILING DATE 02/02/2021  
CLAIM NUMBER SY10571  
INJURY DATE 01/14/2020  
CLAIMANT HUTSON ISAIAH  
  
EMPLOYER CLARK COUNTY  
UBI NUMBER 065 009 679  
ACCOUNT ID 700, 257-00  
RISK CLASS 1501  
SERVICE LOC

CLARK COUNTY  
% GALLAGHER BASSETT  
PO BOX 2934  
CLINTON IA 52733-2934

RECEIVED  
02.09.2021  
Clark County  
Risk Management

# NOTICE OF DECISION

Time-loss benefits are ended as paid through 01/20/2021.  
The medical record shows treatment is concluded and there is no  
permanent partial disability.

This claim is closed effective 02/02/2021.

SUPERVISOR OF INDUSTRIAL INSURANCE  
By Traci Stefaniw  
Si Claims Adjudicator  
Self-Insurance Section  
(360) 902-6936

MAILED TO: WRKR/ATTY(B) - ISAIAH HUTSON, % EMERY REDDY, PLLC  
600 STEWART STREET STE 1100, SEATTLE WA 98101-1269  
EMPLOYER - CLARK COUNTY, % GALLAGHER BASSETT  
PO BOX 2934, CLINTON IA 52733-2934  
PROVIDER - MCCARRON JESSE A MD  
STE 110, 200 NE MOTHER JOSEPH PL, VANCOUVER WA 98664-3299

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS  
COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE  
A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR  
FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE  
APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE  
REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:  
DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44892, OLYMPIA, WA  
98504-4892. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.  
IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE  
APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN  
ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://WWW.BIIA.WA.GOV/).

APR 19 2021

FROM:  
STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
SELF-INSURANCE SECTION  
PO BOX 44892  
OLYMPIA WA 98504-4892  
FAX (360) 902-6900

MAILING DATE: 04/15/21  
CLAIM ID : SY10571  
CLAIMANT : ISAAH HUTSON  
EMPLOYER : CLARK COUNTY  
INJURY DATE : 1/14/20  
SERVICE LOC :  
UBI NUMBER : 065-009-679  
ACCOUNT ID : 700257-00  
RISK CLASS : 1501-00

WORK LOCATION ADDRESS:  
NO ADDRESS REPORTED

JAMES L GRESS  
8705 SW NIMBUS AVE SUITE 240  
BEAVERTON OR 97008-7154

## ORDER AND NOTICE (SELF INSURING EMPLOYER)

\*\*\*\*\*  
\* THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED \*  
\* TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE A WRITTEN REQUEST \*  
\* FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN APPEAL \*  
\* WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS. IF YOU FILE FOR \*  
\* RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS YOU BELIEVE THIS \*  
\* DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF LABOR AND \*  
\* INDUSTRIES, PO BOX 44892, OLYMPIA, WA 98504-4892. WE WILL REVIEW \*  
\* YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE AN APPEAL, SEND \*  
\* IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS, PO BOX 42401, \*  
\* OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT \*  
\* HTTP://WWW.BIIA.WA.GOV/. \*  
\* \*\*\*\*\*

ISAAH HUTSON sustained an injury on 01/14/20 while engaged in employment subject to the Industrial Insurance Laws.

Time-loss compensation benefits were paid from 08/01/20 through 01/31/21, inclusive, to ISAAH HUTSON based upon the representation that they were unable to work in the amount of \$30,518.24.

An investigation reveals that during the period 08/01/20 to 01/31/21, inclusive, ISAAH HUTSON misrepresented their physical abilities, thereby resulting in an overpayment of benefits in the amount of \$30,518.24, which was obtained by willful misrepresentation, omission, and/or concealment of a material fact from the self-insured employer, CLARK COUNTY.

It is ordered that ISAAH HUTSON, shall refund to the self insured employer, CLARK COUNTY, the total overpayment of \$30,518.24 plus a 50% penalty of \$15,259.12 payable to the Department pursuant to RCW 51.32.240, for a total amount of \$45,777.36.

Formal demand is hereby made for repayment in the amount of \$45,777.36 on the basis that such payments have been induced by willful misrepresentation, omission, and/or concealment of a material fact from

MAILING DATE: 04/15/21  
CLAIM ID : SY10571  
CLAIMANT : ISAIAH HUTSON  
EMPLOYER : CLARK COUNTY  
INJURY DATE : 1/14/20  
SERVICE LOC :  
UBI NUMBER : 065-009-679  
ACCOUNT ID : 700257-00  
RISK CLASS : 1501-00

WORK LOCATION ADDRESS:  
NO ADDRESS REPORTED

the self-insured employer/Department.

Please make immediate arrangements to repay this amount. Failure to do so can result in the assessment of interest charges, benefit reductions, a lien or attachment against your real or personal property, garnishment of future wages or referral to a collection agency.

SHERYL WHITCOMB  
PENALTY ADJUDICATOR  
SELF INSURANCE SECTION  
PO BOX 44892  
OLYMPIA, WA 98504-4892  
(360) 902-6905  
FAX #: (360) 902-6900

ORIG: CLAIMANT: ISAIAH HUTSON  
EMERY REDDY, PLLC, 600 STEWART STREET STE 1100,  
SEATTLE WA, 98101-1269  
EMPLOYER: CLARK COUNTY  
C/O GALLAGHER BASSETT, PO BOX 2934,  
CLINTON IA, 52733-2934  
ATTENDING PHYSICIAN: MCCARRON JESSE A MD  
STE 110, 200 NE MOTHER JOSEPH PL,  
VANCOUVER WA, 98664-3299  
EMPLOYER'S ATTORNEY: JAMES L GRESS  
8705 SW NIMBUS AVE SUITE 240, BEAVERTON OR, 97008-7154

FROM:  
STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
SELF-INSURANCE SECTION  
PO BOX 44892  
OLYMPIA WA 98504-4892  
FAX (360) 902-6900

MAILING DATE: 04/16/21  
CLAIM ID : SY10571  
CLAIMANT : ISAAH HUTSON  
EMPLOYER : CLARK COUNTY  
INJURY DATE : 1/14/20  
SERVICE LOC :  
UBI NUMBER : 065-009-679  
ACCOUNT ID : 700257-00  
RISK CLASS : 1501-00

WORK LOCATION ADDRESS:  
NO ADDRESS REPORTED

CLARK COUNTY  
C/O GALLAGHER BASSETT  
PO BOX 2934  
CLINTON IA 52733-2934

MAILED

APR 20 2021

SELF-INSURANCE

ORDER AND NOTICE (SELF-INSURING EMPLOYER)

\*\*\*\*\*  
\*  
\* ANY APPEAL FROM THIS ORDER MUST BE MADE IN WRITING TO THE BOARD \*  
\* OF INDUSTRIAL INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA, WA \*  
\* 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT \*  
\* HTTP://WWW.BIIA.WA.GOV/ WITHIN 60 DAYS AFTER YOU RECEIVE THIS \*  
\* NOTICE, OR THE SAME SHALL BECOME FINAL. \*  
\*  
\*\*\*\*\*

The Department of Labor and Industries has reconsidered the order of 02/02/21 which closed the claim. The department has determined the order is correct and it is affirmed.

MAILING DATE: 04/16/21  
CLAIM ID : SY10571  
CLAIMANT : ISAIAH HUTSON  
EMPLOYER : CLARK COUNTY  
INJURY DATE : 1/14/20  
SERVICE LOC :  
UBI NUMBER : 065-009-679  
ACCOUNT ID : 700257-00  
RISK CLASS : 1501-00

WORK LOCATION ADDRESS:  
NO ADDRESS REPORTED

SHERYL WHITCOMB  
PENALTY ADJUDICATOR  
SELF INSURANCE SECTION  
PO BOX 44892  
OLYMPIA, WA 98504-4892  
(360) 902-6905  
FAX #: (360) 902-6900

ORIG: CLAIMANT: ISAIAH HUTSON  
EMERY REDDY, PLLC, 600 STEWART STREET STE 1100,  
SEATTLE WA, 98101-1269  
EMPLOYER: CLARK COUNTY  
C/O GALLAGHER BASSETT, PO BOX 2934,  
CLINTON IA, 52733-2934  
ATTENDING PHYSICIAN: MCCARRON JESSE A MD  
STE 110, 200 NE MOTHER JOSEPH PL,  
VANCOUVER WA, 98664-3299  
EMPLOYER'S ATTORNEY: JAMES L GRESS  
8705 SW NIMBUS AVE SUITE 240, BEAVERTON OR, 97008-7154

SELF INSURANCE CLAIMS COMPLIANCE  
DEPARTMENT OF LABOR & INDUSTRIES  
PO BOX 44892  
OLYMPIA WA 98504-4892

RETURN SERVICE  
REQUESTED

PRESORTED  
FIRST CLASS



U.S. POSTAGE >> PITNEY BOWES  
ZIP 98501 \$ 000.86<sup>0</sup>  
02 4W  
0000354553 APR 21 2021

Adison Covey  
Gallagher Bassett  
PO Box 2934  
Clinton, IA 52733-2934

5 DJKDIB5 52733



GB IA Recv 2021042709083

CC\_005761